

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Application by SBC Communications Inc.,
Pacific Bell Telephone Company, and
southwestern Bell Communications Services,
Inc. for Provision of In-Region, InterLATA
Services in California

WC Docket No. 02-306

APPLICATION BY SBC FOR PROVISION OF
IN-REGION, INTERLATA SERVICES
IN CALIFORNIA

REPLY APPENDIX

Tabs 1 - 18

Tab	Description
17	Linda S. Vandeloop (UNE Pricing)
18	Cynthia Wales (PIC Administration)

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Application by SBC Communications Inc. ,)	
Pacific Bell Telephone Company, and)	WC Docket No. 02-306
Southwestern Bell Communications Services,)	
Inc. for Provision of In-Region, InterLATA)	
Services in California)	

REPLY AFFIDAVIT OF ENRICO R. BATONGBACAL

REGARDING ALLEGATIONS OF MISCONDUCT

SUBJECT	PARAGRAPH
INTRODUCTION	1
ALLEGATIONS OF MISCONDUCT AND ANTI- COMPETITIVE BEHAVIOR	2
ALLEGATIONS REGARDING WORKFORCE	14
CONCLUSION	17

I, ENRICO R. BATONGBACAL, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

INTRODUCTION

1. My name is Enrico R. Batongbacal. I am the same Enrico R. Batongbacal who previously filed an Affidavit Regarding California State Proceedings in this docket on September 20, 2002, in support of SBC's Application.¹ This affidavit replies to comments by AT&T Corp ("AT&T"); PacWest Telecomm, Inc. ("PacWest"), RCN Telecom Services, Inc. ("RCN"), US Telepacific Corp ("US Telepacific") (collectively "PacWest et al."); and Vycera Communications, Inc. ("Vycera") – alleging misconduct and anti-competitive behavior by Pacific.² This affidavit also briefly addresses XO California, Inc.'s ("XO") concerns about Pacific's recent workforce reduction announcement.

ALLEGATIONS OF MISCONDUCT AND ANTI-COMPETITIVE BEHAVIOR

2. AT&T first claims that Pacific was recently fined \$27 million for defrauding DSL consumers and misleading the California Public Utilities Commission ("CPUC"). See AT&T Comments, pp. 76-77. As AT&T recognizes, however, this payment is the result of a settlement. And as the stipulated facts in the settlement demonstrate, the case had nothing to do with fraud and deception; rather the case involved billing problems that resulted from system issues caused primarily by Pacific's flashcut conversion of its advanced services to its affiliate, SBC Advanced Services, Inc. ("ASI").

¹ See App. A, Tab 1.
² The AT&T comments regarding alleged violations of the CPUC accounting rules and alleged audit obstruction are separately addressed in the Reply affidavits of Robert Henrichs and Emery Borsodi (Reply App. A, Tab 8 and Tab 2).

3. In connection with the merger between SBC and Ameritech, this Commission issued an order in October 1999 (Memorandum Opinion and Order, Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control, 14 FCC Rcd 14712 (1999) (“SBC/Ameritech Merger Order”)), containing a set of conditions that SBC and Ameritech were required to meet in order to obtain the Commission’s approval of the merger. Pursuant to the SBC/Ameritech Merger Order, SBC was required to transfer responsibility for DSL transport to a structurally separated affiliate – ASI. As part of the conversion to ASI (the “conversion”), and the end of Interim Line Sharing as specified in the SBC/Ameritech Merger Order, all provisioning and billing responsibilities for DSL transport were transitioned to ASI. In addition, ASI made the business decision to become a wholesale provider of DSL transport to ISPs and transitioned to this business model, whereby it provided DSL transport to ISPs on a wholesale basis. ASI’s customer, the ISP, would be billed by ASI for the Wholesale DSL Transport.
4. The conversion was massive, involving the migration of approximately 190,000 to 200,000 customer records from Pacific’s systems to ASI’s systems. Moreover, ASI was required, in just months, to replicate the same type of pre-ordering, ordering, provisioning, maintenance and repair, and billing systems Pacific had taken years to develop. This transition resulted in billing errors that were attributable to the extreme complexity of Pacific’s billing and customer data management systems and the difficult process of transferring DSL transport functions to ASI. The resulting billing problems formed the basis of the complaint to the CPUC. In addition, Pacific stated in testimony that confusion caused an underreporting of the number of billing complaints associated with DSL once the advanced service functions were transferred to ASI. Pacific remedied all the known past billing errors, as set forth in

the stipulated facts, and as part of the settlement agreement Pacific and its affiliates set up processes to credit customers for any future billing errors. In addition, Pacific and its affiliates agreed to implement various operational improvements to reduce the number of billing errors and to deal with customer complaints more effectively and efficiently in the future.

5. Pacific, working with its affiliates, ASI and Pacific Bell Internet Services (Pacific's internet affiliate "PBI"), took responsibility for the problems resulting from this conversion and took many corrective measures prior to the underlying complaint being filed. The Administrative Law Judge recognized this effort in his Presiding Officer's Decision, stating that "[t]he settlement describes the many measures respondents have taken and will take to correct their problems and ensure that they do not recur."³ See AT&T Comments Attachment 4. As a result of the settlement, Pacific agreed to pay \$27 million to the State General Fund for the inconvenience and frustration caused by these billing issues.
6. In addition to the settlement payment, Pacific and its affiliates agreed to other remedial measures, including:
 - A credit for the next two years of either \$25 or one month of DSL service for customers who experience future DSL billing errors - double those amounts when the problem is not timely corrected;
 - A tracking and reporting requirement, applicable to all residential and up to 20-line business customers, and a 60-day implementation timeframe and two-year sunset provision;
 - Maintaining business and residential DSL Internet billing centers dedicated to handling billing inquiries for PBI's DSL Internet services; and
 - Improved disconnection notices; upgraded DSL order confirmation, billing, collection, problem resolution, and customer complaint recording and reporting procedure.
7. The second claim raised by AT&T, PacWest et al. and Vycera relates to a purported \$25 million CPUC fine regarding Pacific's marketing scripts and sales practices. See AT&T

³ UCAN v. Pacific Bell Telephone Co., Presiding Officer's Decision at 3 (Cal. PUC September 27, 2002)

Comments at 77-78; PacWest et al. Comments at 9-12; and Vycera Comments at 23-25.

Once again, these commentators do not fully or fairly portray the issue and have the facts wrong. The commentators are referring to a very contentious case filed against Pacific in **1998** (“Sales Practices” complaint) by UCAN, Greenlining/Latino Issues Forum, TIU and the Office of Ratepayers’ Advocates, alleging that Pacific sales representatives misled consumers with the result that they purchased certain optional services they did not need or want, despite the fact that Pacific was following CPUC guidelines in its sales practices.

8. On September **20**, 2001, the CPUC, in a **3 to 2** vote, adopted a decision resolving the Sales Practices complaint, which generally imposed requirements on how Pacific’s sales representatives must interact with customers in taking service orders.⁴ The decision also required that service representatives must follow a sequencing process in making sales to customers (a revised Tariff Rule 12) and provide certain customer notifications. Lastly, the decision imposed a \$25.5 million fine for alleged violations concerning Pacific’s marketing of Caller ID, inside wire and sequential offerings. On rehearing, the CPUC eliminated the employee compensation cap, made other changes to its decision and reduced the fine to \$15.225 million.⁵
9. Notably, two commissioners dissented from the decision and stated that the decision’s interpretation of the standards of review for this complaint case was erroneous, and that the fines and requirements imposed on Pacific were too harsh and were unwarranted. Pacific agrees. In interacting with customers, Pacific’s sales representatives used the service package names, such as the “Basics® Saver Pack” or the “Works®” that are CPUC-approved tariff names. Moreover, Pacific complied with the CPUC-approved education

⁴ D.01-09-058 (Cal. PUC September 20, 2001).

⁵ Order Granting Limited Rehearing and Modifying D.02-02-027 (Cal. PUC February 7, 2002).

requirements on blocking options, and believes the information Pacific provided was sufficient for customer decision making. Customers may change blocking options as often as they wish with no charge, and there is no monthly charge for this option. Customers who order services receive confirmation letters. **If** customers are subsequently unhappy with their service, Pacific has appropriate adjustment policies. Moreover, as a matter of law, Pacific is no longer under an obligation to disclose that landlords and not tenants are responsible for inside wire repair.

10. Although Pacific disagrees with the CPUC's finding and has sought review of its decision, Pacific has always worked to avoid customer confusion in its sales efforts. Pacific has implemented Tariff Rule **12**, as required by the CPUC's D.O1-09-058, that dictates the flow of information to the customer contact to ensure that the customer's request is fully addressed prior to marketing Pacific's intrastate optional services. Further, Pacific has updated its internal practices and procedures to be more explicit in prohibiting unfair, misleading, and predatory sales practices.
11. **Next**, PacWest et al. and Vycera rely on two lawsuits stemming from alleged conduct occurring in 1996 and 1997. See PacWest et al. at 6-8; and Vycera at **21-22**. The first lawsuit involved a 1996 case brought by AT&T, MCI and Sprint against Pacific. The commentators' reliance on this case is particularly peculiar in that – even if the underlying facts were relevant to this proceeding, which they are not – the commentators recognize that there were ultimately no judgments entered against Pacific. Indeed, the only judgments that stood at the time the case was settled were in *favor of Pacific*. The District Court initially granted Pacific summary judgment on the plaintiffs' contract and covenant of good faith and fair dealing claims, and granted the plaintiffs summary judgment on their trade

secret misappropriation and unfair competition complaints. On appeal, however, the Ninth Circuit affirmed the summary judgment findings in favor of Pacific but *reversed* the findings in favor of the **plaintiffs**.⁶ The case subsequently settled – such that it represents absolutely no adjudication of misconduct on the part of Pacific.

12. PacWest et al. and Vycera also cite a lawsuit in Caltech International, filed by a reseller based on alleged conduct from 1996 and early 1997. See PacWest et al. at 8; and Vycera, pp. **22-23**. This case was settled, however, and the District Court vacated the verdict in the case and no judgment was entered.’ This case, likewise, provides no support for the allegation that Pacific previously engaged in anti-competitive behavior, much less that it is engaging in such behavior today. Moreover, the CPUC, on substantially the same facts, dismissed complaints that were filed by certain other CLECs (AT&T, MCI, and Sprint), finding no violations of federal and state law.⁸
13. Most importantly, the foregoing complaints and allegations by the commentators are a “red herring.” None of these matters have anything to do with (a) Pacific’s compliance with the “competitive checklist” **or** (b) how Pacific will interact with its long distance affiliate or other unaffiliated long distance carriers. Moreover, almost all the claims relate to allegations that are many years old. In sum, the allegations have nothing to do with this Commission’s 271 evaluation of whether the local market is open in California; whether or not once relief is granted, SBC will provide interLATA long distance in compliance with the section 272 requirements; or whether SBC’s entry into the interLATA long distance

⁶ AT&T Communications v. Pacific Bell, Nos. 99-15668, 99-15736, 2000 U.S. App. LEXIS 23215 (9th Cir. Sept. 8, 2000).

⁷ Caltech International v. Pacific Bell, No. C.97-2105 (N.D. Cal. Jan. 22 & 29, 2001) (Order of Vacatur on Jury Verdict and Stipulation of Dismissal).

⁸ MCI v. Pacific Bell, D.97-09-113 at 29 (Conclusion of Law 10) (Cal. PUC Sept. 24, 1997). (App. K, Tab 63.)

market in California is in the public interest. Accordingly, these irrelevant allegations should be disregarded.

ALLEGATIONS REGARDING WORKFORCE REDUCTION

14. XO attempts to create a new issue by citing Pacific's recent workforce reduction announcement as casting doubt on future performance. See XO Comments at 20 n.43. Contradicting those claims, however, on September 25, 2002, XO's Western Region Vice President commended Pacific's Account Management Team, Construction Engineering and Network Operations, for provisioning a much needed order in such a short timeframe. The fact is, Pacific will continue to manage its workforce to ensure quality service to both its retail and wholesale customers.
15. Moreover, there are numerous safeguards in place to ensure Pacific's future performance without attempts to micromanage Pacific's workforce. For instance, the CPUC-adopted Performance Incentive Plan and numerous existing safeguards mitigate any potential competitive harms. The Performance Incentive Plan's express purpose is to provide an adequate safeguard against backsliding, once Pacific receives section 271 approval. The plan puts more than \$50 million at risk each month, which is approximately the same liability (measured as a percentage of net revenue) that has been approved in previous 271 applications. See the Affidavit of Gwen Johnson for a more complete discussion of the Performance Incentive Plan (App. A, Tab 12).
16. Additionally, existing competitive safeguards include, but are not limited to, the following:
 - Sections 251, 252 of the Telecommunications Act and the Section 271 fourteen-point checklist, all as implemented in numerous decisions and rules of the FCC and the CPUC;
 - The CPUC's New Regulatory Framework price cap regulation, various affiliate transaction rules and decisions that generally regulate transactions between Pacific and any affiliate;

- The separate affiliate safeguards of § 272 of the Act, *as* implemented by the FCC in the Accounting Safeguards, Non-Accounting Safeguards, and CPNI orders;
- The CPUC's expedited resolution process, interconnection agreement arbitrations, audits, and regulatory oversight and complaint process; and
- The FCC's broad post-approval powers, including revocation of long distance authority.

CONCLUSION

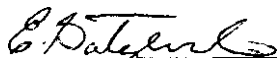
17. The issues raised by the foregoing commentors do not support any findings of misconduct or anti-competitive behavior – and certainly don't support a finding that Pacific's entry into the InterLATA long distance market in California is not in the public interest. Notably, the Commission should recognize the dramatic contrast between the public interest comments of those parties with a vested interest in keeping Pacific out of the long distance market and those who truly represent the interests of the public. The latter are overwhelmingly of the view that Pacific's entry into long distance is in the public interest, that it will benefit California consumers, and that adequate safeguards already exist to protect competition.'
18. Pursuant to Part II. E. of the Consent Decree entered into between SBC Communications Inc. and the Federal Communications Commission, released on May 28, 2002, see Order, In the Matter of SBC Communications, Inc., 17 FCC Rcd 10780(2002), I hereby affirm that I have (1) received the training SBC is obligated to provide to all SBC FCC Representatives; (2) reviewed and understand the SBC Compliance Guidelines; (3) signed an acknowledgment of my training and review and understanding of the Guidelines; and (4) complied with the requirements of the SBC Compliance Guidelines.
19. This concludes my affidavit

⁹ Over 140 comments were filed with the FCC **supporting** Pacific's entry into **long** distance.

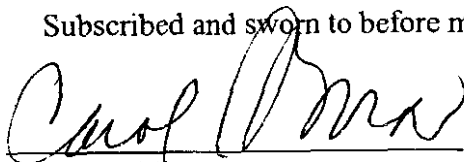
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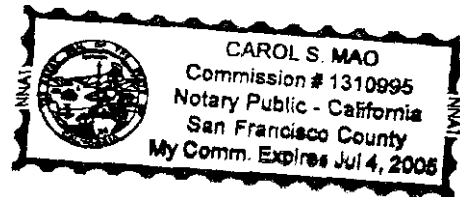
I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 30, 2002.


Enrico R. Batongbacal

Subscribed and sworn to before me this 30th day of October, 2002.


Notary Public





2

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Application by SBC Communications Inc.,
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WC Docket No. 02-306

**REPLY AFFIDAVIT OF EMERY G. BORSODL
REGARDING AT&T'S ARGUMENTS CONCERNING
OVERLAND CONSULTING REPORT**

I, EMERY G. BORSODI, being of lawful age, and duly sworn upon my oath, do hereby depose and state as follows:

PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND

1. My name is Emery G. Borsodi. I am employed by Pacific Bell Telephone Company (“Pacific”). My business address is 140 New Montgomery Street, San Francisco, California 94105. I currently am Director of Regulatory Financial Proceedings for Pacific.
2. In May 1977, I received a B.S. degree in Economics and Business Administration from St. Mary’s College of California. I began my career with Pacific Telephone and Telegraph Company in June 1977 as a Supervisor in the Accounting Department, and I became a Staff Manager in the Corporate Budget Department in July 1981. In October 1984, I became a Finance Manager in Pacific Telesis Group’s (“PTG”) Treasury Department. Thereafter, I served as Director of Finance, Cash Management, Credit Rating Maintenance, and Regulatory Finance for PTG from July 1985 to July 1991. In **July** 1991, I was appointed Director/Chief Financial Officer of Pacific’s Billing Services Group, a position that I held until my current assignment, which began in March 1992.
3. As Director of Regulatory Financial Proceedings, I am responsible for overseeing various filings and proceedings before the California Public Utilities Commission (“CPUC”) that deal with a variety of financial issues, including annual price-cap filings, Z-factor (exogenous-costs) issues, rate-of-return matters, and shareable earnings filings. Over the last 10 years, I have served in a project-management role in major policy proceedings before the CPUC including the SBC/PTG Merger Proceeding and each of the triennial New Regulatory Framework (“NRF”) Reviews. I was assigned management of Pacific’s

responses to Overland's data requests when Overland Consulting commenced its investigation in late April 2000 and have been an integral member of the team responding to Overland's data requests over the ensuing 20 months. Since the issuance of Overland's Report, I have managed and coordinated Pacific Bell's formal responses to the Report.

4. The purpose of this affidavit is to reply to the assertions made by AT&T Corporation ("AT&T")¹ concerning the implications of a report issued by Overland Consulting entitled "Regulatory Audit of Pacific Bell for the years 1997, 1998 and 1999," including the First and Second Supplemental Reports thereto (hereinafter collectively "Overland Report" or "Report").'

DISCUSSION

5. For several reasons discussed in more detail below, the Overland Report, and AT&T's arguments in connection with it, do not support the conclusion that Pacific and Southwestern Bell Communications Services, Inc. ("SBCS"), Pacific's long distance affiliate under 47 U.S.C. § 272, will not operate in accordance with section 272 once SBC is authorized to provide in-region interLATA services in California.
6. First, the Overland Report addresses Pacific's compliance with certain CPUC accounting rules during 1997-1999. The Overland Report does not address SBC's compliance with

¹ See Comments of AT&T Corp. at 55-62, 68-76.

² Regulatory Audit of Pacific Bell for the Years 1997, 1998, and 1999 (February 21, 2002) ("February 21 Report"); Supplemental Report to Regulatory Audit of Pacific Bell for the Years **1997, 1998, and 1999** (May 8, 2002) ("May 8 Report"); Supplemental Report to Regulatory Audit of Pacific Bell for the Years **1997, 1998, and 1999** (June 20, 2002) ("June 20 Report"). These Reports can be found on the CPUC's website at the following address:
<http://www.cpuc.ca.gov/static/industry/telco/supplemental+report+on+audit+of+ pacific+bell.htm>.

the FCC's section 272 rules, which involve transactions between the SBC BOCs and SBCS.³ The Affidavits of Linda Yohe, Joe Carrisalez, and Robert Henrichs, which were filed with SBC's 271 application for California: address SBC's, Pacific's, and SBCS's compliance with the section 272 accounting and non-accounting safeguards. In addition, Mr. Henrich's Reply Affidavit specifically addresses the results of the first Section 272 Biennial Audit of SBC (covering the period from July 10, 2000 to July 9, 2001) (Reply App. A, Tab 8). SBC contends that this Section 272 Biennial Audit is the only relevant audit for drawing conclusions concerning whether Pacific and SBCS are likely to comply with the section 272 requirements once SBC has authority to provide in-region interLATA service in California.

7. Second, **as** indicated above, the Overland Report covered the period 1997-1999. **For** that reason alone, it has no relevance to a period that will begin in late December 2002 or early January 2003 when SBC's authority to provide in-region interLATA services in California would become effective if SBC's section 271 application is approved.
8. Third, AT&T's characterization of the Overland Report and the conclusions that can be drawn therefrom are misleading.⁵ In support of its contention that Pacific and SBCS will "have not met their burden of establishing that they will comply with section 272,"

AT&T enumerates several "conclusions" of the Overland Report, to wit:

³ Overland Report at 3-2. It should be noted that AT&T, at page 8 of its Comments, refers to Pacific's section 272 affiliate **as** "SBC Services (SBCS)." **For** clarity, the Overland Report **does** refer to "SBC Services" in several places. These references, however, are to Pacific's administrative support shared services affiliate, not **its** section 272 long distance affiliate, which is Southwestern Bell Communications Services, Inc., herein referred to as "SBCS".

⁴ Application **by** SBC Communications Inc., Pacific Bell Telephone Company, **and** Southwestern Bell Communications Services, Inc., for Provision of In-Region, InterLATA Services in California, Docket No. 02-306 (filed Sept. 20, 2002) at Appendix A, Tabs 2 (Carrisalez), 9 (Henrichs), and 24 (Yohe).

⁵ Comments **of** AT&T Corp. at 55-56.

- e that Pacific underreported net regulated operating income by approximately **\$2** billion to avoid refunds **to** California consumers of \$350 million;
- that Pacific engaged in improper cross-subsidization by transferring Pacific CPNI for use by affiliates without reimbursement, and by paying SBC \$400 million annually for use of the SBC name;
- e that Pacific did not always comply with CPUC affiliate transaction rules, and internal accounting controls governing certain affiliates were inadequate; and
- that Pacific obstructed the audit.

However, AT&T completely ignores the extensive contrary evidence in the record in the CPUC proceeding that considered the Overland Report (CPUC Rulemaking 01-09-001 and Investigation 01-09-002), and the fact that Overland's "conclusions" cited by AT&T **grossly** mischaracterize the facts.

9. The legitimate net regulated operating income adjustments identified by Overland were not significant. Overland alleges that there was approximately \$2 billion in underreported income by Pacific over the three-year period that was investigated (1997-1999). The validity of this finding, however, has been a vigorously contested issue before the CPUC. Pacific contends that it has overwhelmingly demonstrated that the *legitimate* adjustments identified by Overland amounted to a total of approximately \$102 million in net income over that three-year period.
10. Pacific did not engage in improper cross-subsidization by transferring CPNI **to** affiliates. AT&T contends that the Report "found" that Pacific "effectively transferred its CPNI to SBC's centralized marketing services affiliate while Pacific "has not been compensated

for the transfer.”⁶ The record in the CPUC’s proceeding, however, shows that there was no transfer of CPNI out of Pacific. The record shows that Pacific’s affiliate, SBC Operations, accesses customer information when acting on Pacific’s behalf in performing sales campaigns at Pacific’s direction. No transfer **or** improper access of **CPNI** takes place. The Overland Report did not identify even a single instance where Pacific did not fully comply with **rules** and regulations governing the use of CPNI. AT&T further contends that this alleged transfer of CPNI by Pacific to affiliates without compensation amounts to “a substantial improper subsidy of the SBCS that will give SBCS **an** unmatched competitive advantage in marketing its interLATA services.”⁷ However, the Overland Report contains no conclusion that *SBCS*, Pacific’s section **272** affiliate, will be improperly cross-subsidized through access to CPNI. At most, the Overland Report states that “[s]ince **the** end of **the** audit period, the number of affiliates with the *potential* to benefit from access to Pacific Bell’s customer database has increased,” and that “[a]mong **the** additional affiliates that *may* benefit” is “SBC’s long distance affiliate, Southwestern Bell Communications...”⁸ (Italics added for emphasis). It is abundantly clear, even from the face of Overland’s Report, that Overland Consulting did not “audit” whether SBCS will have access to Pacific’s CPNI, nor did it “conclude” that SBCS will benefit from such access. The Overland Report’s comments in this regard are purely speculative.

⁶ Comments of AT&T Corp. at 58 (citing June 20 Report at 12-1).

⁷ Id. at 14-75.

⁸ June 20 Report at S12-1.

11. Pacific did not engage in improper cross-subsidization by paying SBC \$400 million for use of the SBC name. AT&T alleges that the Overland Report “uncovered” payments made by Pacific for use **of** the SBC corporate name.’ The Report did not, as AT&T alleges, “uncover” this transaction, nor did it otherwise suggest that SBC attempted to hide the transaction. Indeed, the payments at issue were fully disclosed in audited financial statements submitted to the CPUC and publicly available. The record in the CPUC’s proceeding shows that the payments are not only for the “SBC” name, but included payments to Pacific Telesis Group for use of trademarks, including the Pacific Bell Telephone Company corporate name. Additionally, Pacific’s customers did not bear the cost of the payments. The payments were booked by Pacific *below-the-line* and had no impact on regulated earnings **or** the prices paid by Pacific’s customers.
12. The Overland Report does not support AT&T’s conclusion that Pacific and its section 272 affiliate, SBCS, will not follow the section 272 rules governing affiliate transactions. AT&T cites a number of statements in the Overland Report to support its conclusion that “there is no factual basis for the Commission reasonably to conclude that Pacific has satisfied its burden under section 272.”¹⁰ The Overland Report does make certain statements regarding Pacific’s alleged non-compliance with the CPUC’s affiliate transaction and cost accounting rules; however, AT&T ignores and fails to mention other statements in the Report that put these statements into context. For example, the Report found that “[a] majority of the FCC procedures for allocating telephone company costs

⁹ Comments of AT&T Corp. at 58.

¹⁰ Comments of AT&T Corp. at 60-61

between regulated and non-regulated accounting categories were well controlled.””

Further, it states that “SBC and Pacific Bell had accounting systems in place during the audit period to identify and bill affiliate services in all of the areas we reviewed.”” And, although the Report states there were “a number of control weaknesses in these systems,” it also states: “[W]e did not conclude that internal control weaknesses affecting affiliate service transactions had **a** material impact on Pacific Bell’s financial results reported to the CPUC during the **years** 1997 through 1999.”¹³ Finally, the Overland Report concluded that “[t]he majority of Pacific Bell’s procedures for allocating cost between regulated and non-regulated activities were well controlled and consistent with CPUC requirements and FCC ~~Part~~ **64** attributable cost principles.”¹⁴ These statements from the Overland Report Executive *Summary* put AT&T’s criticisms into the proper context, and demonstrate its conclusion that Pacific and SBCS will not follow the section **272** requirements **is** wholly without merit.

¹¹ February 21 Report, Executive Summary at 1-3.

¹² *Id.* at 1-8.

¹³ *Id.*

¹⁴ *Id.* at 1-13.

13. There is no support for the suggestion that Pacific interfered with Overland's engagement. It is important to recognize that Overland Consulting is not an "independent certified public accountant," its investigation was not an "audit" in the traditional sense of the term, and it was not qualified to perform the requested engagement.¹⁵ Overland Consulting also did not follow Generally Accepted Accounting Standards ("GAAS"), and Pacific believes that it had a pre-determined agenda to assert incidents of non-compliance with the CPUC's rules. Nonetheless, the record in the CPUC's proceeding shows that Pacific **fully** cooperated with Overland and never sought to obstruct or delay its engagement. Pacific responded to over 1,300 data requests from Overland composed of over 10,000 questions. In response to Overland's requests, Pacific produced the equivalent of approximately **19** million pages of documents in paper and electronic media. Pacific devoted an extraordinary amount and concentration of resources to satisfy Overland's data requests. Pacific established a full time staff to process the requests, and more than 120 subject matter experts from various departments participated in providing responses. While Pacific objected to a small number of Overland's data requests, its objections were always made in good faith. For example, Pacific objected when Overland sought information clearly outside the CPUC's defined scope of the audit and when Overland sought legally privileged information. In sum, the record in the CPUC's proceeding shows Pacific's extraordinary cooperation with an investigation that was unprecedented in its nature and scope.

¹⁵

In Decision 96-OS-036, the CPUC ordered an objective, independent audit performed by an "independent certified public accountant" in accordance with Generally Accepted Accounting Standards ("GAAS"). The record in Rulemaking 01-09-001 and Investigation 01-09-002 demonstrates that Overland is not registered by the state board of accountancy in California or in any other state and is thus not a certified public accounting firm.

14. The Overland Report also contains numerous erroneous and advocacy-based findings, showing both a biased approach and a lack **of** due care. In fact, many **of** the conclusions reached by Overland in its Report ignore the central issue of whether Pacific complied with the CPUC's rules and regulations. Instead, Overland made a host of speculative and unfounded allegations, as well as numerous policy recommendations, despite the CPUC's clear admonishment that the audit "work product should not include lengthy policy discussions"¹⁶ For example, acting more like an advocate than an independent, disinterested auditor, Overland recommended that:
- "[t]he [CPUC] should consider the potential loss of authority to set accounting and operating standards and reporting requirements as a consequence **of** transferring functions out **of** the regulated telephone company";" and
 - "[t]he CPUC should develop a policy for the treatment of costs associated with developing services marketed to customers outside the boundaries of Pacific's local exchange **territory**."¹⁸
15. Finally, and most importantly, the conclusions stated in the Overland Report are that of Overland Consulting only. They do not represent even a *preliminary* finding **by** the CPUC itself. Indeed, the validity **of** the findings/conclusions in the Overland Report, **as** well as Overland Consulting's qualifications to conduct the engagement, have been the

¹⁶ CPUC Decision 96-05-036 at 10.

¹⁷ February 21 Report, Executive Summary at 1-9.

¹⁸ February 21 Report at 2-16.

subject **of** extensive hearings before the CPUC.¹⁹ The CPUC has yet to issue any report or determination on this matter.

CONCLUSION


16. For all of the reasons discussed above, neither the Overland Report, nor AT&T's arguments in connection with that Report, support the conclusion that Pacific and SBSCS will not follow the section 272 requirements once SBC's application to provide interLATA service in California is approved.
17. Pursuant to Part II. E. **of** the Consent Decree entered into between SBC Communications Inc. and the Federal Communications Commission, released on May 28, 2002, see Order, In the Matter of SBC Communications, Inc., 17 FCC Rcd. 10780(2002), the undersigned hereby affirms that he has (1) received the training SBC is obligated to provide to all SBC FCC Representatives; (2) reviewed and understand the SBC Compliance Guidelines; (3) signed an acknowledgment of my training and review and understanding **of** the Guidelines; and (4) complied with the requirements **of** the SBC Compliance Guidelines.
18. This concludes my affidavit.

¹⁹ CPUC Rulemaking 01-09-001 and Investigation 01-09-002. In considering the Overland Report, the CPUC heard from over 20 witnesses. The matter has been fully briefed and submitted to the CPUC for decision.

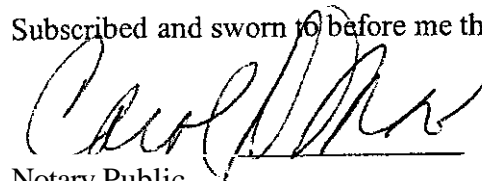
STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO

I declare under penalty of perjury that the foregoing is true and correct

Executed on October 31, 2002.


PRINT YOUR NAME
EMERY G. BORSODI

Subscribed and sworn to before me this _____ of October, 2002.


Notary Public

